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FM AMEMBASSY JAKARTA

TO RUEHC/SECSTATE WASHDC IMMEDIATE 8587

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C O N F I D E N T I A L SECTION 01 OF 02 JAKARTA 000702

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DEPT FOR EAP, EAP/MTS, EAP/MLS, EAP/RSP, DRL, DRL/AWH
NSC FOR EPHU

E.O. 12958: DECL: 04/08/2018

TAGS: PGOV KJUS PREL ID TT

SUBJECT: EAST TIMOR EX-MILITIA LEADER ACQUITTED

REF: A. JAKARTA 672

1B. JAKARTA 619
1C. JAKARTA 405 AND PREVIOUS

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Classified By: Pol/C Joseph Legend Novak, reasons 1.4(b+d).

11. (C) SUMMARY: On April 4, the Indonesian Supreme Court announced the acquittal of Eurico Guterres, a former militia leader, for human rights crimes committed in East Timor in 1999 (per an earlier court ruling, Guterres had been jailed for his crimes). Guterres was released from jail on April 7. Human rights advocates criticized the Supreme Court's action, which was a setback for accountability. END SUMMARY.

SUPREME REVERSAL

12. (U) On April 4, the Supreme Court announced its decision to exonerate Guterres of all charges against him for 1999 violence in East Timor. Guterres was released from Cipinang prison, east Jakarta, at 9:20 p.m. on April 7. The former deputy commander of a pro-integration militia was one of 18 military, police, and militia leaders tried in a 2002 ad hoc Human Rights Court for human rights violations committed in East Timor. Of the 18 tried, Guterres is the only one of two persons to have served jail time. Twelve were acquitted in 2002 by the Human Rights Court and six, including just now Guterres, were eventually acquitted by either an appellate court (one case) or the Supreme Court. In addition to being acquitted, the Supreme Court also ordered that Guterres receive rehabilitation and compensation for his time in jail, according to press reports.

13. (U) The acquittal represents a reversal of the ad hoc Human Rights Court's 2002 conviction of Guterres and the Supreme Court's own 2006 decision to uphold Guterres' sentence on appeal. The acquittal was based on new evidence submitted for the judicial review. The new evidence included information that three of the 13 people that the prosecution charged Guterres with killing were still living, according to press reports. Djoko Sarwoko, a member of the Supreme Court

panel that acquitted Guterres, said the 2002 ad hoc Human Rights Court decision had determined Guterres had command responsibility for violence in East Timor. The judicial review panel decided Guterres did not have command responsibility for the post-referendum attacks because these were unpremeditated and executed outside Guterres' control.

¶4. (C) Panel judges used logic that some legal experts said was inconsistent. Justice Sarwoko compared Guterres' case to the acquittal of Abilio Soares, then-governor of East Timor, to the effect that since Soares was acquitted of human rights crimes in East Timor, therefore Guterres--whom Sarwoko claimed was a subordinate of Soares--should also be freed. Rudy M. Rizky, a judge who convicted Guterres in the 2002 ad hoc court, criticized this reasoning. Soares did provide Guterres with operational space in the governor's complex, but Guterres did not report to the governor. The cases, he said, should not be linked.

CRITICISM OF RULING

¶5. (U) Human rights activists saw the acquittal as a setback. Usman Hamid from human rights NGO Kontras appealed to President Yudhoyono to reconsider the legal process and how the government handles cases of gross human rights violations. With Guterres' release, every individual tried in an ad hoc Human Rights Court has now been acquitted. Hamid called for Yudhoyono to remember his promise to resolve cases of gross human rights violations (see ref B). Indonesia set up ad hoc Human Rights Courts for the 1999 violence in East Timor and for the 1984 massacre in Tanjung Priok, North Jakarta.

¶6. (U) Rafendi Djamin, head of the Human Rights Working Group, said he will bring the issue of Guterres' acquittal to the UN Human Rights Council's Universal Periodic Review of Indonesia's human rights record. (Note: Indonesia will stand

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for a human rights review before the UN Human Rights Council on April 9. Djamin is monitoring the review process in Geneva.) "We can urge the international community to form a human rights court . . . or a hybrid human rights court such as the one former Secretary General Annan recommended when he visited Indonesia and Timor Leste," Djamin told the press.

IMPLICATIONS

¶7. (C) The Supreme Court's reversal is a setback for accountability and raises serious questions about the effectiveness of the ad hoc trials meant to bring justice in human rights cases. However, the Supreme Court's flip-flopping decision-making is not uncommon in the recent history of Indonesia's court system, which has rendered contradictory decisions in other prominent cases. President Yudhoyono's commitment to his promise to resolve past gross human rights violations will be tested. In the next month, the government's response to the Indonesia-Timor Leste Commission for Truth and Friendship report will provide another opportunity to measure the GOI's seriousness about seeking accountability for human rights violations in East Timor.

HUME